App. F. IX-4

(21)

*Previous References*
Mysore 35 – 1894-95

1933. (Land)

File No. 127-33
Serial Nos. 1 & 2

*Later References*
Land 46-36 (1-2)

PRESERVED

# GENERAL AND REVENUE SECRETARIAT.

*Serial Nos.* 1 & 2.

**Part B for** June 36

## SUBJECT.

Re lands belonging to the late Mr. Kandachar Subba Rao's Chattram at Harasanahalli, Chamarajanagar Taluk.

2) To The Mysore Commr.

No. P 5790 of 22.6.36

-, forwards a Copy of the G.O. in the matter and informs that the trust may be enforced against the properties.

M. Abdul Aziz
30.6.36.

Serial No.

From,

The Mys. Comm^r

No. C 1073 /32-33 dated 12.9.33 Solicitor's legal opinion in the matter of certain lands granted to the late Mr. Kandachar, Subba Rao's Chattram at Havadanahalli in the Chamarajanagar taluk.

A' 1) Facts of the case are briefly narrated in the Dy. C.'s letter dated 21st March 1933.

2) One Kandachar Subba Rao residing at Havadanahally, Chamarajanagar Tk died in the yr 1872 leaving certain lands at Havadanahalli on Ramasandra, as endowments to a Chattram to established in his name at Havadanahalli. The lands at Havadanahalli were in possession of one Lingarajaiya as joint pattadar, and those at Ramasandra were mortgaged for Rs 3000/- to one Honnavelli in the year 1861. Both of them had agreed to pay one-half of the produce to the Chatram. Till 1885 they went on enjoying the whole produce of the land without paying any portion to the Chattram. Venkoba Rao, Son of the deceased Kandachar brought this to the notice of the Govt who after careful examination of the question allowed Lingarajaiya to continue in his possession on his agreeing to pay a certain fixed Honnavelli was also allowed to have the possession the land at Ramasandra on payment of nearly 15 Candies of paddy, for the maintenance of the Chattram according to the mortgage deed executed in favour of

NOTE—Contn. Sheet.

2

File No. 5F-193 General and Revenue Secretariat

Hannaelle by the deed it was stated that the mortgage
be to last for 6 years during which time the
mortgagee should enjoy the property in lieu of
the interest due on the principal sum.

3) Venkoba Rao son of the donor sold
his right of equity of redemption to one Bhakshi
Linghba by a registered deed Later on one Lingappa
son of one Lingappa sold all his rights to
one B. Subba Rao for a Consideration of Rs 4000/-

After the expiry of 6 yrs, B. Subba Rao demanded
the possession of the properties from the heirs of
Hannaelle, on tendering the mortgage money of
Rs 500/- to one Ranjamma, daughter in law of the
original mortgagee Hannaelle having refused to
part with the properties, Subba Rao filed a suit
No in the Ranjangud Munsiff's Court for
redemption and mesne profits, and obtained
a decree in his favour, on 17-6-31.

Now the Govt Commr wants to know
whether B. Subba Rao who is in possession of the
properties be Compelled to act up to the terms
of the original mortgage and pay 10 Candies of
paddy for the use of Chavadi, as agreed by the original mortgagee

Subba Rao however Contends that the
terms of the mortgage are of the nature of a charge
on the equity of redemption, and therefore not enforceable
and that the properties should revert to the
mortgagor's heirs unconditionally.

The Hon'ble Mysore who was Consulted in

General and Revenue Secretariat | File No. | of 193 | [App. F. III—2

Serial No.

the matter is reported to have stated that B Subba Rao will be bound if it is proved that the amount of paddy in arrears on the produce prior to the mortgage of 1861. The whole enquiry in relation thereto the mortgagor's rights in into is bound by the conditions of the mortgage. As for Consideration whether the conditions attached the mortgage may not be treated as implied Contract under sec 65 of the I C Act and Subba Rao's lia enforced accordingly Govt. Advocate may also be Consulted in the matter.

G.O.No.P.W.36833 dated 2/10/33

TSD 16/9

5) Forwarded with compliments to the Govt Advocate for favour of opinion.

for Secretary

2/10/33.

Diary No 2/33-84 dt 3-10-33

Returned with compliments.

6) The facts of the case seem to be as follows:-

One Kandachar Subba Rao was the owner of a garden land, an item of wet land and one item of dry land. On 10-1-1860 half of the garden was given over to one Lingarajiah by Subba Rao under a written instrument of the same date, in consideration of the improvements that the said Lingarajiah had effected in respect of the said garden. Under the same instrument the other half of the garden was also made over to the said Lingarajiah on condition that half the produce from the said garden should be given for the benefit of a choultry founded by Subba Rao

No. 70 dt 13-11-33 dt. 16-11-33

GENERAL SECRETARIAT 16 NOV. 1933 No. [illegible]

NOTE—Contn. Sheet.

Subba Rao at a village named Hardanahalli. This transaction was subsequently incorporated in a document dated the 4th October 1860.

The said Subba Rao mortgaged with possession, the wet and dry lands in favour of Honna Setti Mallia for Rs.500/- on 28-5-1861. The conditions in the Mortgage Deed were that the Mortgagee should deliver 23 puttis or 18 and odd candies of paddy for the benefit of the ~~self~~ same choultry and that the balance of the usufruct from the properties should be enjoyed by the Mortgagee towards the interest (.....) due on the principal amount. The mortgage was to be in force for a period of 60 years and even after the period of 60 years, the mortgagor could, under the Mortgage Deed continue in possession of the properties and continue to deliver the same quantity of paddy to the choultry. The document also provided for a right of pre-emption in favour of the Mortgagee.

Subba Rao died somewhere in the year 1872 and on 2-3-1872, one Venkoba Rao who was the adopted son of Subba Rao, sold the equity of redemption in the wet and dry lands to one Lingappa. Subsequently, he sold the same equity of redemption to the Mortgagee on 19-4-1872. He appears to have also sold the garden land to one Krishnappajee.

Krishnappajee seems to have filed a suit for the recovery of the garden, which appears to have been dismissed on the ground that the choultry alone was entitled to receive half the produce from the garden and that the

Plaintiff

Serial No.

Plaintiff was not entitled to the possession of the garden.

10) Lingappa filed a suit, O.S. 152 of 1876 for the redemption of Honna Setti's mortgage. This suit was decided by Sir K. Seshadri Iyer who dismissed the sui holding that the suit was premature as the Mortgage period of 60 years had not yet expired. Incidentally he seems to have observed in the Judgment that the Plaintiff was not entitled even to get the paddy from the mortgagee but that it was only the choultry that was entitled to the same.

11) He again filed O. S. 9 of 1879 for the identical relief and the suit was again dismissed on the ground that the decision in O.S. 152 of 1876 was res-judicata and that the suit was premature.

12) Thereafter Krishnappajee appears to have filed Petitions to the Muzrae authorities complaining that Lingarajiah and Honna setti were not delivering the produce to the choultry and Venkoba Rao also appears to have presented a similar petition.

13) An enquiry in the matter appears to have been conducted by the Deputy Commissioner of Mysore who took down statements of Lingarajiah and Honna setti on 30th January 1885 wherein they admitted the dedication of the garden and dry lands to the Choultry, but contended that subsequent to the dedication Subba Rao had entrusted to them the administration of the Trust and that Government should not interfere. Time was granted to them for the production of evidence on this point and on their having failed to do so, their contentions were negatived

NOTE—Contn. Sheet.

WD 0246 --GPB—15,000—22-8-32

negatived and a report made to Government accordingly.

16) On 10-7-1885 Government ordered that the possession of Lingarajiah and Honna Setti of the properties might continue on condition that the former should deliver half the produce from the garden, and the latter 23 putties of paddy every year to the choultry.

17) Since then, the persons in possession of the properties appear to have been delivering the produce as above and Government have passed some orders regarding the construction of the building, regulation of the choultry expenses, establishment etc.

18) On 9-1-1928, Lingappa (who purchased the equity of redemption in the wet and dry lands from Venkoba Rao on 2-3-1872) sold the said equity of redemption to one Berike Subba Rao for Rs.4,000/-. This B. Subba Rao filed a suit against this Ex Lingappa and one Nanjamma, the heir of the Mortgagee Honna Setti for redemption of the Mortgage created by Subba Rao, in O.S. 724 of 27-28 on the file of the Munsiff of Nanjanagud.

19) This suit was decreed and in execution of the decree this B. Subba Rao got possession of the mortgaged properties and in reply to a demand from the Amildar for the delivery of the paddy due to the choultry, denied the Trust and pleaded that it has become extinguished.

The point for consideration is whether Government who are managing the choultry can compel B. Subba Rao to deliver the paddy and whether that obligation can be considered to be a charge on the properties in the hands of Berike Subba Rao.

This gentleman relies mainly upon the Judgment of

the

Serial No.

the Munsiff of Nanjanagud in O.S. 724/27-28. The Judgment is not binding on Government who were no - party to the case. Moreover the question of endowment to the Choultry was expressly left open, (vide; para 70 of the Judgment).

15) The recitals in the Mortgage Deed dated 28th May 1861 go to show the existence of an antecedent - Trust in favour of the Choultry and in any event those recitals by themselves may be construed as constituting a Trust with respect to 23 Putties of paddy in - favour of the Choultry.

16) The Mortgagee himself has admitted the dedication in his deposition before the Deputy Commissioner, Mysore, on 30-1-1885. Though these records do not - seem to be available in the Amildar's Office, they may be available in the Deputy Commissioner's Office and they may be secured. Even in Krishnappajee's suit and Lingappa's suit, it was held that Venkoba Rao had no right to sell the property after dedication and that the Choultry alone had the right to receive the paddy.

17) B. Subba Rao who is only a purchaser from Lingappa who himself purchased them from Venkoba Rao cannot be said to acquir an absolute title ~~to the properties~~ and the Trust may, I think, be enforced against ~~him~~ the properties.

18) The following documents may throw much light on the matter and they may be obtained and sent to me with the file:-

(1) The Exhibits filed by the parties in O.S.724/27-28 on the file of the Munsiff of Nanjanagud.

NOTE—Contn. Sheet.

(2)

WD 70—GBPM—60,600—13-8-31

8

1464

File No. of 193 General and Revenue Secretariat

(2). Copies of documents executed by Kandachar Subba Rao on 10-1-1860 and 4-10-1860.

Government Advocate.
15.11.1933.

H.

~~[illegible]~~

v) of the Exhibits filed in the Suit in the Nanjangud Court, Exhs A, D and I are in the file. Please verify.

vi) The Hon Govt may be moved to send the Exhibits + the Copies of the 1860 documents Regd by the GA.

17/11/33

vii) Copies of Exhibits are not traceable in the file. Dft to the Hon. Govt's perusal.

viii) Please mingle up

17/11.

Issue

24/11

Issued no. P. 1198 dt 28.11.33

Sec A
24/11/33

6331

General and Revenu Secretariat — Law File No. — of 1933 — [App. F. III—2

Serial No.

From,

The Muz. Commr.

No. C. 1075/32-33 d. 28.5.34 informg the D.C. reports that it is asd from the Munsiff of Ranjangud that the documents are not available as the were returned to the parties concern

Subs for orders with refce to para 11 of

TSD 30/5

Forwarded with compts to the Govt Advocate with refce to this note of 15.11.33

[illegible]
30/5

No. P24/32
dtd 30/5/1934

GOVT. ADVOCATE'S OFFICE. 1 MAY 1934 BANGALORE.

7. No. 914/33-34
dt 31.5.34

Returned with Compliments.

I have nothing further to add. As observed by me in para 21 of my note dt 15-11-33 The Decree may be enforced against the properties.

[illegible]
12.6.34.

Offr reply
Note:
15/6.

TYPING SECTION. 20 JUN 1934 GENL & REV. SECT.

Dft subs for appr

TSD 15/6.

[illegible]
19/6

NOTE—Contn. Sheet.

WD 01536—GPB—7,500—5-4-34

CO

6331

File No. of 193 General and Revenue Secretariat

To,

The Mag. Comm.r

No. P. 5790 d. 22.6.34 forwarding a copy of the Govt. Ad.s opinion in the matter and informing that the Trust may be enforced against the Properties.

B
25/6/34.

2 be filed Regd.

M C. 13]

No. G 1075/32-33

11666

OFFICE OF THE MUZRAI COMMISSIONER
IN MYSORE.

*Dated, Bangalore, 6th September 1933.*

Enc: Secy file 34/1896-97 & Vernl file of records need Rm to be returned

FROM

N. Madhava Rau, Esq., B.A., B.L.,
~~SCVENKATANARAYANAIYA, BSQ, MA, BL,~~
*Muzrai Commissioner in Mysore.*

To

Rau 173-33-1

R. V. Ramaswami, Esq., M.A., B.L.,
*Secretary to the Government of His Highness*
*the Maharaja of Mysore.*
G e n e r a l *Department.*

GENERAL 12 SEP. 1933 SECTION

The Early Proceedings put a clear statement of facts & the position on which opinion is asked for

RM 13/9/33

I have the honor to forward herewith in original for reference and obliging return correspondence ending with letter No.11/33-34 dated 28th July '33 received from the Survey Superintendent in the matter of certain lands belonging to the late Mr. Kandachar Subba Rau's Chattram at Haradanahalli in the Chamarajanagar Taluk.

2. The Secretariat File No.35 of 1894-95 (herewith sent) leading to G.O. No.S.35-36 dated 15th March 1895 directing the establishment of the Chattram and the Deputy Commissioner's letter dated 11st March 1933 explain in sufficient detail the previous history of the case. The question under immediate consideration relates to the payment of half the produce in respect of Maji Nos.1402 and 1422 by the present enjoyer, Mr. B. Subba Rau who has obtained possession of the lands through the Civil Court. The question was referred to the Public Prosecutor, Mysore Division, and the opinion furnished by him is contained in the records. The Survey Superintendent states that from the entries in the field records of original Survey it is seen that S.Nos.414 and 417 of Ramasamudra village are registered in the name of Venkoba Rau Subba Rau jointly.

3. The connected file of vernacular papers leading to the Government Order of 1895 which would have helped in the determination of the question whether the trust was created by Mr. Kandachar Subba Rau prior to 1861 or 1872 so as to hold good as against the present owner of the lands is said to be not available. I request that

the legal aspect of the case may be kindly got examined with reference to the records now available, and instructions conveyed to me whether a case may be made out that the payment stipulated by Mr. Subba Rau is a charge on the property.

I have the honor to be;

Sir,

Your most obedient servant,

Muzrai Commissioner.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE 3

General and Revenue Secretariat

Dated, Bangalore, 20th June 1933.

No. 1808 Muz

Same one file 21st.

From

The *Financial Secretary to the Government of His Highness the Maharaja of Mysore.*

To

C1075/32-33

22 JUN 1933

The Muzrai Commissioner in Mysore,
Bangalore.

Sir,

I am directed to forward herewith Muzrai File No. 35 of 1894-95 which contains all the three orders of Govern-ment referred to in your letter No.1075/32-33 dated 9th May 1933 re - Kandachar Subba Rao's Chattram at Haradanahalli-Chamarajanagar Taluk and to request that it may kindly be returned when done with.

I have the honor to be,
Sir,
Your most obedient servant,

Financial Secretary to Government.

ACH.2.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 2398

Dated, Bangalore, 22 - 11 - 1933

23

From

H.V. Ramaswami, Esquire, M.A., B.L.,
*General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

N. Madhava Rau, Esquire, B.A., B.L.,
Muzrai Commissioner in Mysore, Bangalore.

Sir,

With reference to your letter No. C. 1075/32-33 dated the 12th September 1933 soliciting legal opinion in the matter of certain lands belonging to the late Mr. Kandachar Subba Rao's chattram at Hardanahalli in the Chamarajanagar Taluk, I am directed to request that the exhibits filed by the parties in O.S. No. 724/27-28 on the file of the Munsiff of Nanjangud excepting Exhibits A and D on behalf of the Plaintiff and Ex. I on behalf of the Defendant and the copies of documents executed by Kandachar Subba Rao on the 10th January 1860 and 4th October 1860 may kindly be obtained and sent for reference.

I have the honor to be,
S i r ,
Your most obedient servant,

for General Secretary to Government.

P.H.

5

Appendix F G—1]

SUBJECT .....

.....

.....

Section

File No.

Serial No.

*Diary No. of letter replied to* .....

No. P 2398/

To

The Rev. Commr

General and Revenue Secretariat

( )

*the* *193*

Sir,

Date of issue 23/4/33

Signed by .....

With reference to your letter no. C. 1075/32-33 dated 12th Sept. Soliciting legal opinion in the matter of certain lands belonging to the late Sh. Kandachar Subba Rao's Chatram at Hardanahalli in the Channarayanapatna Taluk. I am directed to request that the exhibits filed by the parties in O.S. 724/27-28 on the file of the Munsiff of Channarayanapatna and the Copies of documents executed by Kandachar Subba Rao on 10-1-1860 and 4.10.1860 may kindly be obtained and sent for reference.

I have the

List of enclosures Excepting Exhibits A+D on behalf of the Plff + Exh 1 on behalf of the Defts

Copied by .....

Examined by .....

WD 0677—GD15—15,000—8-11-33

for Secy

No. C 1075/32-33

633/1934

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE,

*Bangalore,* 28 *May* *1934*

FROM

N. MADHAVA RAU, ESQ., B.A., B.L.,
*Muzrai Commissioner in Mysore,*
*Bangalore.*

TO

C. Abdul Wajid, Esq., B.A.,
Secretary to the Government of Mysore,
General Department.

Sir.

Production of certain documents in connection with the dispute relating to the lands endowed to Manjachar Subba Rao's Chattram at Harnahalli in Chamarajanagar Taluk.

---

With reference to your letter No.I.3393 dated 23-1-34 above, I have the honor to state that the Deputy Commissioner reports that it is ascertained from the Munsiff's Court, that the documents are not available, as they were sent to the parties concerned.

I have the honor to be,
Sir,
Your most obedient servant,

N. Madhava Rau

Muzrai Commissioner.

Appendix F G—1]

SUBJECT .....

.....

.....

Section Law

File No. 137-33

Serial No. 2

No. PS.790 Encl Records & G.A.'s opinion

To The Mys. Commr

Sir,

With reference to the correspondence ending with your letter no. 16111 dated 28.5.34 in the matter of certain lands belonging to the late Mr. Kandacha Subba Rao's Chattram at Haradanahalli in Chamarajanagar Taluk, I am directed to forward herewith a copy of the Govt. Advocate's opinion in the matter and to state that the trust may be enforced against the properties in question.

The entire file of records sent with your letter no. C.1075 dated 12 Sept. 33 is herewith returned.

I have the honour to be, Sir, Your most obedient servant,

Secretary to Government.

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the 193 .

Date of issue 22/6/34

Signed by Jas. M. Rao

List of enclosures .....

(Pages 6-21 not noted)

Omit the last para of the G.A.'s note

Copied by [3 + 2 copies of G.A.'s note] 21/6

Examined by .....

WD 0677—GPB 415,000—5-11-33

19/6/34.

19/6/34

I have the honour for similar

Government Advocate's opinion No.U.O.No.70/33-34 dated the 16th November 1933 to the General Secretary to Government, Bangalore.

---

One Kandachar Subba Rao was the owner of a garden land, an item of wet land and one item of dry land. On 10-1-1860, half of the garden was given over to one Lingarajiah by Subba Rao unde a written instrument of the same date, in consideration of the improvements that the said Lingarajiah had effected in respect of the said garden. Under the same instrument the other half of the garden was also made over to the said Lingarajiah on condition that half the produce from the said garden should be given for the benefit of a choultry founded by Subba Rao at a village named Hardanahalli. This transaction was subsequentely incorpor ated in a document dated the 4th October 1860.

The said Subba Rao mortgaged with possession, the wet and dry lands in favour of Honna Setti Mallia for Rs.500/- on 28th May 1861. The conditions in the Mortgage Deed were that the Mortgagee should deliver 23 putties or 18 and odd candies of padd for the benefit of the same choultry and that the balance of the usufruct from the properties should be enjoyed by the Mortgagee towards the interest( ) due on the principal amount. The mortgage was to be in force for a period of 60 years and even after the period of 60 years, the Mortgagee could, under the Mortgage Deed, continue in possession of the properties and continue to deliver the same quantity of paddy to the choultry. The document also provided for a right of pre-emption in favour of the Mortgagee.

Subba Rao died somewhere in the year 1872 and on 2-3-1872 one Venkoba Rao who was the adopted son of Subba Rao, sold t equity of redemption in the wet and dry lands to one Ling Subsequently, he sold the same equity of redemption to Mortgagee on 19-4-1872. He appears to have also so garden land to one Krishnappajee.

Krishnappajee seems to have filed a suit for the recovery of the garden, which appears to have been dismissed on the ground that the choultry alone was entitled to receive half the produce from the garden and that the plaintiff was not entitled to the possession of the garden.

Lingappa filed a suit, O.S.152 of 1876 for the redemption of Honna Setti's mortgage. This suit was decided by Sir K.Seshadri Iyer who dismissed the suit holding that the suit was premature as the Mortgage period of 60 years had not yet expired. Incidentally he seems to have observed in the Judgment that the Plaintiff was not entitled even to get the paddy from the mortgagee but that it was only the choultry that was entitled to the same.

He again filed O.S.9 of 1879 for the identical relief and the suit was again dismissed on the ground that the decision in O.S.152 of 1876 was Res Judicata and that the suit was premature.

Thereafter Krishnappajee appears to have filed petitions to the Muzrai authorities complaining that Lingarajiah and Honna setti were not delivering the produce to the chaitry and Venkoba Rao also appears to have presented a similar petition.

An enquiry in the matter appears to have been conducted by the Deputy Commissioner of Mysore who took down statements of Lingarajiah and Honna setti on 30th January 1885 wherein they admitted the dedication of the garden and dry lands to the Choultry, but contended that subsequent to the dedication Subba Rao had entrusted to them the administration of the Trust and that Government should not interfere. Time was granted to them for the production of evidence on this point and on their having failed to do so, their contentions were negatived and a report made to Government accordingly.

On 10-7-1885 Government ordered that the possession of Lingarajiah and Honna Setti of the properties might continue on condition that the former should deliver half the produce from the garden, and, the latter 23 putties of paddy every year to the choultry.

Since then, the persons in possession of the properties appear to have been delivering the produce as above and Government have passed some orders regarding the construction of the building, regulation of choultry expenses, establishment etc.

On 9-1-1928, Lingappa (who purchased the equity of redemption in the wet and dry lands from Venkoba Rao on 2-3-1872) sold the said equity of redemption to one Berike Subba Rao for Rs.4,000/-. This B.Subba Rao filed a suit against this Lingappa and one Hanjamma, the heir of the Mortgagee Honna Setti for redemption of the Mortgage created by Subba Rao, in O.S.724/27-28 on the file of the Munsiff of Nanjangud.

This suit was decreed and in execution of the decree this B.Subba Rao got possession of the mortgaged properties and in reply to a demand from the Amildar for the delivery of the paddy due to the choultry, denied the Trust and pleaded that it has become extinguished.

The point for consideration is whether Government who are managing the choultry can compel B.Subba Rao to deliver the paddy and whether that obligation can be considered to be a charge on the properties in the hands of Berike Subba Rao.

This gentleman relies mainly upon the judgment of the Munsiff of Nanjangud in O.S.724/27-28. The judgment is not

not binding on Government who were no party to the case. Moreover the question of endowment to the choultry was expressly left open (vide para 70 of the judgment).

The recitals in the Mortgage Deed dated the 28th May 1861 go to show the existence of an antecedent Trust in favour of the choultry and in any event those recitals by themselves may be construed as constituting a Trust with respect to 23 putties of paddy in favour of the choultry.

The Mortgagee himself has admitted the dedication in his deposition before the Deputy Commissioner, Mysore, on 30-1-1885. Though these records do not seem to be availablein the Amildar's office, they may be available in the Deputy Commissioner's Office and they may be secured. Even in Krishnappajee's suit and Lingappa's suit, it was held that Venkoba Rao had no right to sell the property after dedication and that the Choultry alone had the right to receive the paddy.

B. Subba Rao who is only a purchaser from Lingappa who himself purchased them from Venkoba Rao cannot be said to acquire an absolute title and the Trust may, I think, be enforced against the properties.

---

Copy.

For General Secretary to Government.

vvk.2.